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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	14-Cr-141 (SHS)
-against-	:	
JEAN PIERRE MIKHAEL,	:	<u>OPINION AND ORDER</u>
Defendant.	:	

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SIDNEY H. STEIN, U.S.D.J.

On February 9, 2016, defendant Jean Pierre Mikhael moved for leave to file a late notice of appeal pursuant to Fed. R. App. P. 4(b)(4). A notice of appeal from a criminal conviction must be filed within 14 days following the entry of judgment. Fed. R. App. P. 4(b)(1)(A)(i). The judgment of conviction was entered in this action on December 17, 2015 [doc. # 137]. Mikhael's time in which to file a notice of appeal was thus December 31, 2015.

The 14 day deadline set by Rule 4(b)(1)(A)(i) may, however, be extended if this Court finds "excusable neglect or good cause" in Mikhael's failure to file his notice of appeal within the mandated 14 days. However, Rule 4(b)(4) requires that, "[u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)."

Since "the time otherwise prescribed by this Rule 4(b)" expired on December 31, 2015, a finding of "excusable neglect or good cause" would enable the Court to extend the time to file a notice of appeal only up until February 1.¹ Mikhael's motion was filed on February 9, 2016

¹ The permissible 30 day extension pursuant to Rule 4(b)(4) expired on January 30, 2016, which fell on a Saturday. The deadline was therefore extended to February 1, which is "the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. App. P. 26(a)(1)(C).

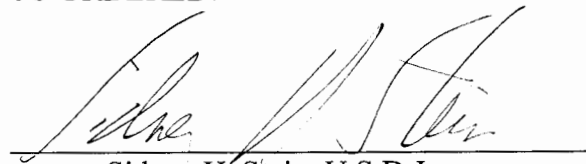
(doc. # 148), eight days beyond the last permissible date by which the Court could extend the time for Mikhael to file his notice of appeal.

In addition, the government has opposed Mikhael's motion as, *inter alia*, untimely [see doc. # 152] and the U.S. Court of Appeals for the Second Circuit has determined that, although Rule 4(b) is not jurisdictional, "[w]hen the government properly objects to the untimeliness of a defendant's criminal appeal" – as it has here – "Rule 4(b) is mandatory and inflexible." United States v. Frias, 521 F.3d 229, 234 (2d Cir. 2008). See Eberhart v. United States, 546 U.S. 12, 17-18 (2005) (*per curiam*); United States v. Moreno-Rivera, 472 F.3d 49, 50 n.2 (2d Cir. 2006) (*per curiam*); United States v. Singletary, 471 F.3d 193, 196 (D.C. Cir. 2006). Accordingly,

IT IS HEREBY ORDERED that Mikhael's motion for leave to file a late notice of appeal [doc. # 148] is denied.

Dated: New York, New York
February 16, 2016

SO ORDERED:



Sidney H. Stein, U.S.D.J.